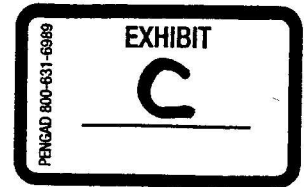


THE STATE OF NEW HAMPSHIRE
SUPREME COURT



In Case No. 2002-0243, Petition of Senator Clifton Below & a., the court on July 11, 2002, issued the following order:

Before the court is the Senate President's motion to reconsider the court's opinion, issued June 24, 2002. Attached to his motion are affidavits from the Nashua and Manchester city clerks explaining how the clerks created new ward boundaries for their respective cities. For the first time, the court was advised that they claimed to have used federal census block equivalency data in adjusting ward lines. In a companion case, Petition of Representative Peter Burling & a., the court received the official maps of Nashua and Manchester showing the ward boundaries as adjusted after the 2000 census and certified copies of the Nashua and Manchester city charters as amended to reflect the ward boundaries changed after the 2000 census. The new ward boundaries differ from the ward boundaries used by the court in establishing a new district plan for the New Hampshire Senate. The Senate President asks, among other things, that the court amend the district plan for the Senate by using the current ward lines for Nashua and Manchester.

It is helpful to review the events leading to the filing of this motion. The jurisdiction of this court was invoked in April 2002, when eleven senate Democrats filed a petition for original jurisdiction requesting the court to declare the existing State senate districts unconstitutional and to impose a deadline for the legislature to enact a valid senate redistricting plan. Given the need to establish a redistricting plan consistent with constitutional requisites before the 2002 senate election, we accepted jurisdiction. On May 22, 2002, the senate and the house recessed without enacting a valid senate redistricting plan. On May 23, 2002, the court determined, that since it had no assurance that a redistricting plan would be validly enacted in time for the upcoming election, it must establish a constitutional senate redistricting plan.

The court endeavored to accomplish the task of redistricting the New Hampshire Senate as fairly, efficiently and quickly as possible, given the imminence of the scheduled September primary. It ordered the parties to submit constitutional redistricting proposals by June 6, 2002. To ensure that the apportionment plan for the New Hampshire Senate was based upon the last general census of the inhabitants of the state taken by authority of the United States or of this state, the court ordered that any redistricting plan submitted by the parties use PL 94-171 census data and that it be provided as a census block equivalency file. On June 5, 2002, the Senate filed a motion alleging that following the 2000 census, New Hampshire's cities received census data from the census bureau and proceeded to redraw their city ward lines. The Senate alleged that "it is likely that ward lines drawn by New Hampshire cities may not correspond with the block files requested in the court's order." The court on June 5

issued an order permitting the parties to submit plans based on ward lines drawn as a result of the 2000 federal census. The court specifically noted that it was expressing no opinion as to whether any such plan would satisfy the federal and state constitutional principle of one person/one vote, and invited the parties to address that issue in their pleadings and at oral argument.

The court received the plans submitted by the parties on or before June 6, 2002. The plans submitted by the parties indicated that they were based upon ward boundaries drawn after the 2000 federal census was conducted. None of the plans submitted by the parties identified the ward boundaries changed after the 2000 census was conducted, the location of the new ward boundaries, or the data from which the changed ward boundaries were derived.

Thus, on June 10, 2002, in the companion case of Petition of Representative Peter Burling & a., the court attempted to obtain additional information regarding the changes alleged to have been made by cities to their ward lines by ordering the New Hampshire House of Representatives to provide the court, in written and electronic form, the block equivalency files showing ward changes made by any city based upon the 2000 federal census figures. The House of Representatives responded that it was unable to comply with this request before oral argument on June 11, 2002.

Oral arguments in both this case and Petition of Representative Peter Burling & a. were held on June 11. At oral argument, the court stated that "we need the [census] block equivalency files to show what census blocks were shifted from ward to ward . . . in order for us to construct a plan. . . . We just have to know what pieces of the census data have been changed as a result of these ward changes" and asked who had this information. During a recess, the Clerk of Court asked counsel for the Secretary of State to provide the court with information about any ward boundary changes made after the 2000 census was conducted and, specifically, to identify the census blocks affected by the ward boundary changes. Counsel for the Secretary of State said that the Secretary of State did not have this information.

During oral argument in the companion case, counsel for the House of Representatives informed the court that "only one city . . . uses census blocks [to change its ward boundaries], and that's Dover." Counsel further informed the court that while the cities of Manchester and Nashua had both changed their ward boundaries after the 2000 census was conducted, neither city used census block data to make these changes; both cities "used streets" to make changes to their ward boundaries.

Because our State Constitution requires that any apportionment plan be based upon the last federal decennial census, see N.H. CONST., pt. II, arts. 9, 11, 26, the court then informed the parties that "in the absence of the data, hearing that most of the cities haven't used the census data, and to expedite the process we're in, we're going to have to rely upon the unadjusted PL 94-171 census data for those wards."

After oral argument, no party provided the court with the requisite data. On June 24, 2002, the court issued its district plan for the Senate. The plan relied upon the unadjusted PL 94-171 census data for the entire State, including those cities that adjusted their ward

boundaries after the 2000 census was conducted. The court ordered that the filing period for candidates for the Senate would run from June 26 to July 5, 2002.

In their response to the Senate President's motion, the petitioners disputed the accuracy of the population figures for the new wards provided in the affidavit of the Nashua city clerk. The court determined that in both Nashua and Manchester, there appeared to be discrepancies between the populations of the wards reconfigured after the 2000 census, as reported by the city clerks in their affidavits and as reported in the federal census data. The discrepancies in Manchester were relatively minor; however, in Nashua, the discrepancies were substantial and in both wards 7 and 8 exceeded 2,000 people.

By order dated July 5, 2002, the court set forth a list showing what it believed were the populations for the newly-configured wards by census block. The court ordered that if any party did not agree that the federal census data figures as set forth on the list were accurate, that party should state the party's reasons for disagreement in a pleading to be submitted by July 9, 2002. The parties agreed that several of the figures in the Nashua city clerk's affidavit that was filed with the Senate President's motion to reconsider were erroneous; several of the parties filed a new affidavit from the Nashua city clerk agreeing that the court's figures, which are set forth below, are accurate:

NASHUA

Ward 1: The population reported in the federal census data for ward 1 as currently configured is 9,551.

Ward 2: The population reported in the federal census data for ward 2 as currently configured is 9,704.

Ward 3: The population reported in the federal census data for ward 3 as currently configured is 9,698.

Ward 4: The population reported in the federal census data for ward 4 as currently configured is 9,943.

Ward 5: The population reported in the federal census data for ward 5 as currently configured is 9,625.

Ward 6: The population reported in the federal census data for ward 6 as currently configured is 9,252.

Ward 7: The population reported in the federal census data for ward 7 as currently configured is 7,438.

Ward 8: The population reported in the federal census data for ward 8 as currently configured is 11,816.

Ward 9: The population reported in the federal census data for ward 9 as currently configured is 9,578.

With respect to Manchester, the Senate President, the Senate, and the Secretary of State disagreed with the populations for wards 5, 6, 7, 8 and 9 listed in the court's July 5 order. They provided a memorandum from the Office of the City Clerk of the City of Manchester (memorandum) explaining the discrepancies in certain wards. A review of the parties' responses reveals that the following discrepancies remain.

MANCHESTER

Ward 1: The population reported in the federal census data for ward 1 as currently configured is 9,033.

Ward 2: The population reported in the federal census data for ward 2 as currently configured is 9,073.

Ward 3: The population reported in the federal census data for ward 3 as currently configured is 9,013.

Ward 4: The population reported in the federal census data for ward 4 as currently configured is 8,900.

Ward 5: The population reported in the federal census data for ward 5 as currently configured is 9,070. The memorandum indicates that this figure should be 9,072.

Ward 6: The population reported in the federal census data for ward 6 as currently configured is 8,978. The memorandum indicates that this figure should be 9,008.

Ward 7: The population reported in the federal census data for ward 7 as currently configured is 9,070. The memorandum indicates that this figure should be 9,052.

Ward 8: The population reported in the federal census data for ward 8 as currently configured is 8,921.

Ward 9: The population reported in the federal census data for ward 9 as currently configured is 8,846.

Ward 10: The population reported in the federal census data for ward 10 as currently configured is 8,715.

Ward 11: The population reported in the federal census data for ward 11 as currently configured is 8,708.

Ward 12: The population reported in the federal census data for ward 12 as currently configured is 8,679.

Thus, it appears that the court has finally been provided with sufficient corrected information to enable it to consider the new ward lines adopted by the cities of Nashua and Manchester. At this late date, given that the court has already issued a district plan upon which citizens may have relied, and that the filing period for candidates for the senate has expired, the court will not undertake a wholesale revision of the plan it issued on June 24. In order to ensure that its plan complies with the State constitutional requirement that senate districts not divide any city ward, however, the court grants the Senate President's motion in part. See N.H. CONST. pt. II., art. 26.

Manchester wards 5, 6, and 7, which are the only wards the populations of which are still in question, are all located in the court plan in Senate District 18. The difference between these totals is de minimis, and the discrepancies among the three wards are irrelevant in this proceeding if all three wards remain in the same Senate District. Thus, we need not and do not decide in this proceeding which numbers are accurate. Accordingly, in this proceeding we will continue to use the population reported in the federal census data for Manchester wards 5, 6 and 7 as set forth above.

The court's district plan shall be amended to use the current ward boundaries for the cities of Nashua and Manchester as set forth in the certified copies of the Nashua and Manchester city charters amended to reflect the ward boundaries changed after the 2000 census. Senate District 12 shall be amended to consist of New Ipswich, Mason, Brookline, Hollis, and

Nashua wards 1, 2, 3 and 7; Senate District 13 shall be amended to consist of Nashua wards 4, 5, 6, 8 and 9. The remaining Senate Districts shall be unchanged from our opinion dated June 24, 2002. As so amended, the court's plan has an overall range of deviation of 5.46%, and, thus, satisfies the one person/one vote standard.

In addition, the amended plan furthers the court's goal of imposing the least change for New Hampshire citizens in that it changes the senate districts for even fewer people than the court's June 24 plan. The amended plan changes the senate districts for only 16% of the State's population (197,689 people). The reason for this improvement is that fewer wards in Nashua are changed to different senate districts in the amended plan.

The Senate President asserts that the Nashua City Clerk has indicated that Nashua is likely to adjust its ward boundaries in the future. The Senate President contends that if the city does so, this may greatly increase the total deviation of Senate Districts 12 and 13. Senate Districts 12 and 13 are today drawn using the current ward boundaries adopted by, and in place in, the City of Nashua. The boundaries of Senate Districts 12 and 13 are hereby fixed, and will not be affected if the city adjusts its ward boundaries in the future. Should the city choose to adjust its ward boundaries in such a way that they no longer coincide with the boundaries between senate districts, then it will be the responsibility of the appropriate officials to make internal election process accommodations.

The filing period provided in RSA 655:14, for purposes of the 2002 senatorial election, shall be extended until July 18, 2002, only for candidates in those Senate Districts affected by this order (Senate Districts 12, 13, 16, 18 and 20).

The slip opinion issued on June 24, 2002, is modified by deleting the Index to Appendices and the appendices themselves, and by replacing them with the following Index to Appendices and the appendices attached to this order.

INDEX TO APPENDICES

Senate District Plan (State Map)	<u>Appendix A</u>
Senate District Population Report	<u>Appendix B</u>
Full Geography Report with Population Totals	<u>Appendix C</u>

BROCK, C.J., and NADEAU, DALIANIS and DUGGAN, JJ.,
concurred.

Eileen Fox,

Clerk